

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

MICHAEL CLYDE WILLIAMS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case No. CV412-296
CR499-241

REPORT AND RECOMMENDATION

Michael Clyde Williams has submitted for filing his second 28 U.S.C. § 2255 motion attacking his 1999 conviction and 224-month sentence for distributing crack cocaine. (Doc. 1); *see United States v. Williams*, No. CR499-241 (S.D. Ga. Apr. 18, 2000); *Williams v. United States*, No. CV401-089 (S.D. Ga. July 7, 2004) (first § 2255 motion). Since this is a successive motion, Williams must first “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A); *see* 28 U.S.C. § 2255(h) (cross-referencing § 2244 certification requirement). In fact, this Court *must* dismiss second or successive petitions, without awaiting any

response from the government, absent prior approval by the court of appeals. *Tompkins v. Sec'y, Dep't of Corrs.*, 557 F.3d 1257, 1259 (11th Cir. 2009); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996); see also *Hill v. Hopper*, 112 F.3d 1088, 1089 (11th Cir. 1997).¹

Because Williams has filed this latest § 2255 motion without prior Eleventh Circuit approval, this Court is without jurisdiction to consider it. Consequently, it should be **DISMISSED** as successive. Applying the Certificate of Appealability ("COA") standards set forth in *Brown v. United States*, 2009 WL 307872 at * 1-2 (S.D. Ga. Feb. 9, 2009) (unpublished), the Court discerns no COA-worthy issues at this stage of the litigation, so no COA should issue. 28 U.S.C. § 2253(c)(1); see *Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (approving *sua sponte* denial of COA before movant filed a notice of appeal). And, as there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Thus, *in forma pauperis* status on appeal should likewise be **DENIED**. 28 U.S.C. § 1915(a)(3).

SO REPORTED AND RECOMMENDED this 26th day of

¹ Williams has actually submitted his § 2255 motion on an Eleventh Circuit application for leave to file a second or successive motion. (Doc. 1.) It is unclear whether he filed this in both courts or simply made a mistake by sending it here. Regardless, he has not accompanied his motion with an order from the Eleventh Circuit permitting him to file a second or successive petition.

November, 2012.

A handwritten signature in black ink, appearing to read "M. Smith", is written over a horizontal line.

**UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA**